IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9103 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KIRITBHAI R VAGHELA

Versus

SURENDRANAGAR MUNICIPALITY

Appearance:

1. Special Civil Application No. 9103 of 1997

MR JD AJMERA for Petitioner.

Mr. Deepak M. Thakkar for M/S THAKKAR ASSOC. for Respondent No. 1

Mr. I.M.Pandya, Asstt. Government Pleader for Respondent No. 2

MR TUSHAR MEHTA for Respondent No. 3

GOVERNMENT PLEADER for Respondent No. 5, 6

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 18/01/2001

ORAL JUDGEMENT

This petition has been filed for quashing and setting aside the order dated 25th June, 1997 passed by the Government of Gujarat respondent no. 5 in Revision Application no. 50 of 1997 confirming the order dated 21st May, 1997 passed by the respondent no. 6 Collector, Surendranagar in Municipal case no.17 of 1997. The petitioner filed application under section 258 of the Gujarat Municipalities Act before the Collector for cancellation of the permission granted to the respondent nos. 3 and 4 for the construction of the hospital as proposed construction area lies in the residential zone and permission cannot be granted for the construction of the hospital. That application was rejected by the Collector vide order dated 20th February, 1997. The petitioner preferred Revision Application before the State Government and the State Government vide its order dated 7.4.97 set aside the order of the Collector dated 20.2.97 and remanded the matter to the Collector for re-consideration. The Collector, after giving an opportunity of hearing to the parties dismissed the petitioner's application being Municipal case no.17 of 1997. The petitioner therefore, preferred a Revision Application before the State Government against the order of the Collector dated 21st May, 1997. The State Government, after giving a reasonable opportunity of hearing to the petitioner rejected the application on 25th June, 1997 in absence of the petitioner. By means of this petition, therefore, the petitioner has challenged both the orders i.e. the order dated 21st May,1997 passed by the Collector and the order dated 25th June, 1997 passed by the State Government dismissing the application of the petitioner.

3. The affidavits have already been exchanged. When the case was called out, none appears on behalf of the petitioner though lateron Mr. Ajmera, learned counsel for the petitioner appeared. Learned advocate Mr. Thakkar on behalf of the respondent no.1 Municipality and the learned Assistant Government Pleader Mr. Pandya on behalf of the respondent nos. 2,5 and 6 have appeared. They have contended that the matter in dispute has already been agitated and decided at the behest of the petitioner by another person namely Deepak R Kothari. In that matter, Deepak Kothari approached the Collector, Surendranagar under section 258 of the Gujarat Municipalities Act, 1963. It was contended that the construction which the respondent no. 3 was carrying out in the said land was contrary to the provisions of building bye-laws and regulations and the sanction

granted by the municipal authorities as well as town planning authorities were illegal and improper. Hence, the construction in question was unlawful and the Collector was requested to stop the enforcement of the sanction order granted by the Municipality and the said construction. The Collector directed the City Survey Officer for survey of the construction in question and report the same to him. The Collector did not furnish a copy of the report of City Survey Officer and no opportunity of hearing was given to him and the Collector rejected the application vide his order dated 1.7.95. That order was challenged by Mr. Kothari in this Court by filing a writ petition being Special Civil Application no. 6017 of 1995. This Court allowed the petition and remanded the matter to the Collector for reconsideration with some observations. The Collector, after complying with the direction held that the construction was carried out as per the sanction and permission granted by the municipal authorities as well as the town planning authorities were correct. Thereafter, Mr. Kothari filed Special Civil Application no. 58 of 1996.It was also observed by this Court that from the order of the Collector, it appeared that when the earlier complaint was received by him, he had directed by his order to the Town Planning Committee to re-consider the claim of the respondent no.3 and find out whether the construction was according to rules and regulations. The Town Planning Committee found the construction as per rules and regulations. As such, when both the authorities found the construction in question as per rules and regulations and there was no material before them to hold that the claim of the City Survey Officer as well as the Town Planning Officer was improper or incorrect as also was found by this Court and no illegality or perversity was found by this Court in the findings recorded by the Collector. This Court found that there is no encroachment upon any fundamental rights or statutory rights of the petitioner Mr. Kothari. That petition being Special Civil Application no. 58 of 1996 was dismissed by this Court. Thereafter, again being aggrieved by the order of the learned Single Judge in Special Civil Application, the petitioner of that petition preferred L.P.A. No. 161 of 1997 before the Division Bench of this Court. The Division Bench in LPA did not find any illegality or perversity in the order passed by the learned Single Judge and the appeal was rejected by the order dated 26th August, 1997. After rejection of the LPA by this Court, Mr. Ajmera, the learned advocate for Mr. Kothari has filed this petition which is sworn on 6th October, 1997.

4. The learned counsel for the respondent

nos. 3 and 4 contended that the petitioner is not residing in the area where hospital has been constructed and is running. He has no personal or bonafide interest for the litigation. The petitioner has no locus standi to file this petition and this petition is not in a public interest litigation. Hence, this petition deserves to be dismissed. It is also contended that the matter has already been concluded by this court in the Special Civil Application which has been confirmed by the Division Bench in LPA. This is a second round of litigation regarding permission or construction being illegal and the hospital should not be permitted and stopped and costs should be awarded to them.

5. I have considered the submissions made by the learned counsel for the respondents. As the matter has already been decided by this court in Special Civil Application no. 58 of 1996, thereafter, the decision of the learned Single Judge dated 7.8.96 has been confirmed by the Division Bench in LPA No. 161 of 1997 on 26.8.97. The second round of litigation cannot be permitted in respect of the same property. This petition is not in the form of a public interest litigation. The petitioner has no personal or bonafide interest in agitating and contesting the matter in litigation. As such, this petition is not entertainable and is hereby dismissed. Notice is discharged with no order as to costs.

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